



March 19, 2001

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2001-1071

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145056.

The City of Lubbock (the “city”) received a request made to the city’s claims management service for all information related to a named former city employee. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the responsive information.¹

We first note that the submitted materials include information that may not be withheld pursuant to a permissive exception of the Public Information Act. The 76th Legislature amended section 552.022 of the Government Code to provide several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.” In pertinent part, this section now reads

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- ...
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted materials includes check stubs and invoices wherein the city is billed for services performed. Section 552.103 of the Government Code, which you raise to protect this information, is a permissive exception intended to protect only the interest of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law. *See e.g.*, Open Records Decision No. 473 (1987). We have marked the information which must be released under section 552.022 of the Government Code.

The submitted materials also include medical records. The release of medical records is governed by section 159.002 of the Occupations Code, the Medical Practices Act ("MPA"), rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *Id.* Where an individual has a right of access to medical records under a provision of the MPA, that information may not be withheld under section 552.103 of the Government Code. *Id.* Therefore, if the MPA provides the requestor here with a right of access to the medical record information, the city may not withhold the records under section 552.103 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To determine that the information relates to the anticipated or pending litigation, we follow the rule that "ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.).

You relate that the city is the named defendant in a pending lawsuit alleging the wrongful death of the subject employee. You refer to a filed petition in this case as "Exhibit C" although no such exhibit is attached to your correspondence. We nevertheless accept your representation that a wrongful death action is pending and assume that this petition was filed before the city received the subject request for information. From our review of the submitted information, which concerns workers compensation claims by the decedent, we conclude that it relates to this pending litigation. However, absent special circumstances, where the opposing party to the litigation has had access to the records at issue, no

section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, such information must be released. The submitted materials include items which bear the signature of the requestor. These items, as well as any other information that this opposing party to the pending litigation has had access to, must be released to this requestor. We have marked items of the type that must be released.

We conclude that the information that the requestor has had previous access to, as well as the information made public by section 552.022 of the Government Code, must be released. All other responsive information may be withheld under section 552.103 of the Government Code. Note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

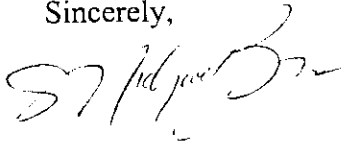
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "MJ Burns", is written over the typed name.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 145056

Encl: Submitted documents

cc: Mr. Craig Johnston
Attorney at Law
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(w/o enclosures)